ALAC Advice on Subsequent Procedures of April 2021

Replies to ICANN Board's Questions

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Agenda

- ◉ **Relevant dates**

  16 April 2021: ALAC Advice on SubPro ratified, addresses 12 of 41 topics in the SubPro PDP WG Final Report

  12 Sep 2021: ICANN Board resolves to have ICANN Org conduct an Operational Design Phase for SubPro (SubPro ODP)

  20 Oct 2021: ICANN Board poses clarifying questions on said ALAC Advice; commenced interaction by way of a call with some ALAC Members/Advice pen-holders

  Jan 2022: SubPro ODP expected to commence

- ◉ **Draft replies to ICANN Board's questions**

  Board asked clarifying questions to and/or remarked on 10 of our 12 topics + a preface

  No replies required for #5 UA, #6 Name Collision, and #12. ALAC Standing in Community Objection

- ◉ **Q & A**

Topic #0: Timing and Operational Design Phase (ODP)

Advice: *"[Advice] for Board's consideration, approval, or adoption for onward operational design and/or implementation of the SubPro WG's recommendations as put forth by the GNSO Council."*

Board CQ: *"The ICANN Board would like to clarify the ALAC's expectations for when the Board should take action on this ALAC Advice on the Subsequent Procedures PDP Recommendations."*

◉ **Proposed replies**

> **Board should take Advice into account while ODP is carried out**
> **Still, appreciate a response to Advice at Board's earliest convenience**

Topic #1: New gTLD Program Objectives and Metrics

Advice:
[1] *"Any expansion of the New gTLD Program must be beneficial to all stakeholders."*
[2] *"Program Objectives must be sufficiently reviewed and particularized to enable formulation of suitable metrics for effective evaluation beyond just general consumer choice, and DNS marketplace competition aspects."*

Board CQ: *"The Board would like to clarify the ALAC's intention in the statement "Any expansion of the New gTLD Program must be beneficial to all stakeholders" and how such a statement aligns with ICANN's remit and public interest goals."*

◉ **Proposed replies**

> **ALAC not opposed to a new round for New gTLDs – hope for more IDNs, Community/Niche TLDs**
>
> **But Program expansion must, to the extent possible, take into account all interests, including those who do not regularly participate in PDPs**
>
> **Advice is entirely consistent with ICANN's remit and public interest goals – ICANN Commitments & Core Values per Bylaws:-**
>
> > • **Article 1, Section 1.2(b)(vii) & Section 1.2(c)**
> >
> > • **Article 1, Section 1.2(b)(iii) + Board GPIF, "*whether the Board will, where feasible and appropriate, depend on market mechanism to promote and sustain a competitive environment in the DNS market*"**
>
> **Also consistent with Bylaws Section 4.6(d) on CCT Reviews, which is expected to be updated by ATRT3 Recommendation 3.2**
>
> **In other words, without suitable metrics to evaluate market mechanisms, how to tell if mechanisms are good, bad or sustains a competitive environment?**

Topic #2: CCTRT Recommendations related to SubPro

Advice:
[1] CCTRT Report of 2018 focused on two things: intention (goals, objectives) and data;
[2] concern over lack of action on CCT Recs re: DNS Security Abuse, ASP, user expectation wrt gTLD name-content relationship; and
[3] all prerequisite & high priority CCT Recs be implemented prior to next round.

Board CQ: In referring to various developments, *"The Board would like to note that <u>if the ALAC has any questions about topics addressed by recommendations in the CCT Final Report that were not included in the list of recommendations that the Board approved, the ALAC may consider posing its own questions to the Board on these subjects</u> (without reference to the CCT recommendations), and the Board stands ready to discuss further with the ALAC."*

◉ **Proposed replies**

       CCTRT Recs have become distorted and dispersed
       ALAC will endeavor to restate from ALAC perspective

Topic #3: DNS Abuse Mitigation

Advice:
[1] Deferring issue solely to a wider ICANN community effort or "holistic approach" wastes valuable opportunity to contractually compel more immediate, increased efforts to stem 'abuse';
[2] Landscape of DNS Abuse evolving, anti-abuse measures must be continuously updated / widened;
[3] Even with "holistic approach", must happen promptly, outcomes in place prior to next round, consider inputs in prior ALAC Advice, SSR2 Final Report, SAC114, SAC115, GAC PSWG proposal.

Board CQ: *"The Board believes that the <u>efforts to combat DNS abuse will be an ongoing, continual one</u>, and in some cases "completion" may not be applicable or feasible. Within this context, the Board would like to discuss with the ALAC its <u>expectations for "completing" outcomes."</u>*

Board CQ: *"Additionally, the Board would like to better understand the ALAC's view regarding the Contracted Parties' definition of "abuse", …. The Board notes that some of the inputs noted in the ALAC's advice do not align with the Contracted Parties' definition. <u>Does the ALAC accept the Contracted Parties' definition of abuse?"</u>*

◉ **Proposed replies**
ALAC agrees there's no completion
Need to set measurable objectives
Stick to CPH definition for now

Topic #4: Enforceability of PICs & RVCs

Advice:

[1] All provisions in contract with ICANN must be enforceable & enforced by Contractual Compliance (CC) – steps to be taken to remedy "unenforceability" of PICs/RVCs;

[2] Better, more particularized reporting by CC on thresholds derived & used to assess compliance or non- compliance of a PIC/RVC;

[3] Should review PICDRP to allow for complaints against any alleged registry violation of a PIC/RVC without need to show evidence of significant harm suffered

Board CQ: *"The Board would like to pose for discussion a possible different approach to enforcement of PICs/RVCs that focuses not on dispute resolution but rather <u>a model in which the Registry who wishes to apply for an RVC must demonstrate a methodology by which compliance with the RVC could be objectively evaluated</u>. Does the ALAC have any views on this specific approach?"*

◉ **Proposed replies**

Open to Board's proposed approach on RVCs, objective evaluation could be conducted using Board's GPIF on Commitment a.iv, Core value b.ii, and Core value b.vi, and with reference to GAC Consensus Advice

Approach must also be subject to community input

Regardless, need more particularized reporting by CC on thresholds derived & used to assess compliance or non-compliance of an RVC for action to be taken

Topic #7: Closed Generics

Advice: *"…direct ICANN Org to suspend any processing or acceptance of any applications for CGs until such time consensus policy is adopted on how to address applications for CGs which serve a global public interest."*

Board CQ: *"The Board would like to clarify whether the ALAC believes a consensus policy process is the only solution, or if there are other potential solutions for addressing closed generics."*

Board CQ: *"The Board notes the ALAC's reference that these strings "serve a global public interest." The Board would like to clarify the ALAC's understanding of how to define "global public interest" and how these strings may meet that threshold."*

◉ **Proposed replies**

> **Status Quo is no closed generics**
>
> **Community appears to be against them**
>
> **Need a definition of them which is objective**

Topic #8: Applicant Support (ASP – Applicant Support Program)

Advice:
[1] Need policy direction, evaluation metrics for ASP success; too many aspects left to IRT;
[2] "*…direct ICANN Org to secure funding to support ASP .. and take a more active coordinating role in the ASP pro-bono assistance mechanism.*"

Board CQ: *"The Board agrees that participation from underserved regions is a top priority...* [through SubPro ODP] *…ICANN Org to investigate whether it is feasible for ICANN org to facilitate small in-person or hybrid community meeting(s), should travel and meeting conditions allow, to begin generating awareness in underserved regions regarding the potential opportunity of subsequent rounds, to initiate discussions regarding how ICANN org will provide support for linguistic needs and IDNs, and to provide information regarding ICANN's mission and the goals of the new gTLD initiative."*

◉ **Proposed replies**

> **Board hasn't specifically addressed our Advice on evaluation metrics, resource allocation and commitment – is the Board intent on waiting on ODA before acting further on these aspects?**

> **Program objectives should be Policy, not implementation**

Topic #9: Auctions and Private Resolution of Contention Sets

Advice:
[1] Ban private auctions, mandate ICANN-only auctions, so that proceeds can at least be directed for uses in pursuit of public interest (eg. per CCWG Auction Proceeds recommendations);
[2] ICANN-only auctions should be Vickrey auction model (not just second-price, sealed bid auctions);
[3] The "bona fide intent affirmation" recommendation has no real purpose - too subjective, no penalty;
[4] Re: Contention Resolution Transparency Requirements framework, no protections for disclosing applicants, all terms of every concluded private resolution be disclosed to ICANN Org (subject only to NDA commitment) – need data to support and inform future policy work

Board CQ: *"The Board would like to clarify whether the ALAC advice is intended to state a preference for resolving contention via the ICANN auction, and if so, what kind of parameters would the ALAC set around that?"*

◉ **Proposed replies**

      Board's question is unclear, to refer Board to back to our Advice

Topic #10: Community Priority Evaluation (CPE)

Advice:
[1] Applauds reform per SubPro Outputs, many came from At-Large, but falls short in 2 respects:
[a] IG 34.4 fails to address an unreasonable impediment to proving both "awareness and recognition of the community members" for CPE Criterion 1- A;
[b] IG 34.12 fails to stipulate that the shortlisting and selection of CPE provider(s) by ICANN Org be subject to community input as a proactive measure for selecting the most suitable CPE Provider.

Board CQ: *"The Board would like to understand the ALAC's preferred approach to addressing its concerns regarding the CPE process. The Board notes that it cannot dictate policy outcomes, and the ODP is not an opportunity to reopen or revisit policy questions settled during a PDP nor to develop new/additional policy."*

◉ **Proposed replies**

Re: IG 34.4 - Board should consider remitting/sending back to GNSO Council for reconsideration with an explanation.

- **To do with CPE Criterion 1-A of requiring "awareness AND recognition of community members" to score points: a 2-face problem**

- **SubPro Output recognized "recognition" could be not measurable - recommended IG to fix - but does not do the same with "awareness"**

- **So, omission nullifies the 'fix' because of the "AND" conjunctive**

Re: IG 34.12 - Board should consider directing ICANN Org to conduct its shortlisting and selection of CPE provider(s) subject to community input

- **Aid transparency, avoid risk of repeat of widespread criticisms largely due to biases held by the selected CPE provider for 2012 round.**

Topic #11: Geographic Names at the Top Level

Advice:
[1] Consider public interest ramifications and serious potential consequences in allowing applications for Non-Capital City Name strings which do not clearly allude to and/or commit applicants to whether the TLD will be used primarily for purposes associated with that city name **-**

Board CQ: *"The Board notes the complexities surrounding the legal definition of geographic names, as evidenced by the application for .AMAZON. Can the ALAC provide any additional insight into defining a geographic name, e.g., from legal or case studies?"*

◉ **Proposed replies**

    Lesson from ".AMAZON" case? The existing policy is problematic.

    ICANN would do well to respect interest of local communities/actors to strings matching names with geographical meaning in their location, beyond just international trademark laws

      • **Use eg of local Swiss laws – local authorities have duty to protect certain names**

      • **Use eg of a large, populous Non-Capital City Name – Shanghai**

    Stronger preventive protection for such strings is merited to prevent unintended consequences – repeat call for non-capital cities name meeting specified criteria be subject to letters of support/non-objection from relevant local governmental/public authorities irrespective of the applicant's declared use of the TLD

Q & A

Thank you for your questions and input.